

AMENDED IN SENATE SEPTEMBER 6, 2013

AMENDED IN SENATE AUGUST 22, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1399

Introduced by ~~Committee on Jobs, Economic Development, and the Economy (Medina (Chair), Campos, Daly, Fong, Fox, Linder, Mansoor, Melendez, and V. Manuel Pérez)~~ Assembly Members Medina and V. Manuel Pérez

March 11, 2013

An act to ~~amend and renumber Sections 13997.2 and 13997.7 of, and to add the heading of Article 6 (commencing with Section 12100) to Chapter 1.6 of Part 2 of Division 3 of Title 2 of, the Government Code, and to amend Section 44559.1 of the Health and Safety Code, relating to economic development. add Section 26011.9 to the Public Resources Code, and to add and repeal Sections 17053.9 and 23622.9 of the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1399, as amended, ~~Committee on Jobs, Economic Development, and the Economy Medina. Economic development. Income taxation: credits: New Market Tax Credit.~~

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws. Existing law also creates the California Tax Credit Allocation Committee, which has specified duties in regard to low-income housing credits.

This bill would allow a credit under both laws, in modified conformity with a federal New Market Tax Credit, for taxable years beginning on

or after January 1, 2015, and before January 1, 2021, in a specified amount for investments in low-income communities. The bill would limit the total annual amount of credit allowed pursuant to these provisions to an amount equal to any portion not granted under a specified sales and use tax exclusion, not to exceed \$40,000,000 per calendar year; and would limit the allocation of the credit to a cumulative total of no more than \$200,000,000. This bill would impose specified duties on the California Tax Credit Allocation Committee with regard to the application for, and allocation of, the credit. The bill would require the committee to establish and impose reasonable fees upon entities that apply for the allocation of the credit and use the revenue to defray the cost of administering the program, as specified, thereby making an appropriation.

This bill would take effect immediately as a tax levy.

~~Existing law defines specified terms relating to economic development and authorizes the Business, Transportation and Housing Agency, and its secretary, to expend specified funds.~~

~~This bill would renumber these provisions, instead authorize the Governor's Office of Business and Economic Development and its director to expend these funds. This bill would authorize the Executive Director of the California Infrastructure and Economic Development Bank to expend these funds, but only if AB 1247, relating to the Small Business Assistance Act of 2013, is enacted and takes effect on or before January 1, 2014. This bill would also make conforming changes.~~

Vote: majority. Appropriation: ~~no~~-yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 26011.9 is added to the Public Resources
- 2 Code, to read:
- 3 26011.9. The authority shall make a determination of the
- 4 amount of the one hundred million dollars (\$100,000,000) in
- 5 exclusions not granted in the assigned calendar year pursuant to
- 6 Section 26011.8. An amount equal to that amount shall be granted
- 7 in the subsequent calendar year through the New Market Tax
- 8 Credit Program pursuant to Sections 17053.9 and 23622.9 of the
- 9 Revenue and Taxation Code. This section shall not prevent a
- 10 taxpayer granted an extension pursuant to Section 6010.8 of the
- 11 Revenue and Taxation Code from applying for, and receiving a

1 *refund for, taxes paid under Part 1 (commencing with Section*
2 *6001) of Division 2 of the Revenue and Taxation Code.*

3 *SEC. 2. Section 17053.9 is added to the Revenue and Taxation*
4 *Code, to read:*

5 *17053.9. (a) There is hereby created the California New*
6 *Markets Tax Credit Program as provided in this section and*
7 *Section 23622.9. The purpose of this program is to stimulate*
8 *economic development, and hasten California's economic recovery,*
9 *by authorizing tax credits for investment in California, including,*
10 *but not limited to, retail businesses, real property, financial*
11 *institutions, and schools. The California Tax Credit Allocation*
12 *Committee shall have responsibility for the administration of this*
13 *program as provided in this section and Section 23622.9.*

14 *(b) (1) For taxable years beginning on or after January 1, 2015,*
15 *and before January 1, 2021, there shall be allowed as a credit*
16 *against the "net tax," as defined in Section 17039, an amount*
17 *determined in accordance with Section 45D of the Internal Revenue*
18 *Code, as modified as set forth in this section.*

19 *(2) This credit shall be allowed only if the taxpayer holds the*
20 *qualified equity investment on the credit allowance date and each*
21 *of the six following anniversary dates of that date.*

22 *(c) Section 45D of the Internal Revenue Code is modified as*
23 *follows:*

24 *(1) (A) The references to "the Secretary" in Section 45D of the*
25 *Internal Revenue Code are modified to read "the committee."*

26 *(B) For purposes of this section, "committee" means the*
27 *California Tax Credit Allocation Committee as described in*
28 *subdivision (a) of Section 50199.7 of the Health and Safety Code,*
29 *or any successor thereto.*

30 *(2) Section 45D(a)(2) of the Internal Revenue Code is modified*
31 *by substituting for "(A) 5 percent with respect to the first 3 credit*
32 *allowance dates, and (B) 6 percent with respect to the remainder*
33 *of the credit allowance dates." with the following:*

34 *(A) Zero percent with respect to the first two credit allowance*
35 *dates.*

36 *(B) Seven percent with respect to the third credit allowance*
37 *date.*

38 *(C) Eight percent with respect to the remainder of the credit*
39 *allowance dates.*

1 (3) *The provisions of Section 45D(b) of the Internal Revenue*
2 *Code is modified as follows:*

3 (A) *Section 45D(b)(1) of the Internal Revenue Code is modified*
4 *by substituting “3 years” for “5 years” and “3-year period” for*
5 *“5-year period.”*

6 (B) *Section 45D(b)(3) of the Internal Revenue Code is modified*
7 *by substituting “qualified low-income community investments in*
8 *California” for “qualified low-income community investments.”*

9 (4) *Section 45D(d)(1)(A) of the Internal Revenue Code, relating*
10 *to qualified low-income community investments, is modified to*
11 *include any capital or equity investment in, or loan to, any real*
12 *estate project located in a low-income community or any operating*
13 *business that, at the time the initial investment is made, has 250*
14 *or less employees and is located in a low-income community. The*
15 *real estate project or operating business shall meet all other*
16 *conditions of a qualified active low-income community business,*
17 *except as modified by paragraphs (5) and (6).*

18 (5) *The term “qualified active low-income community business,”*
19 *as defined in Section 45D(d)(2) of the Internal Revenue Code is*
20 *modified as follows:*

21 (A) *Section 45D(d)(2)(A)(i) of the Internal Revenue Code is*
22 *modified by substituting “any low-income community in*
23 *California” for “any low-income community.”*

24 (B) *Section 45D(d)(2)(A)(ii) of the Internal Revenue Code is*
25 *modified by substituting “any low-income community in*
26 *California” for “qualified low-income community investments.”*

27 (C) *Section 45D(d)(2)(A)(iii) of the Internal Revenue Code shall*
28 *not apply.*

29 (D) *The following shall apply in lieu of the provisions of Section*
30 *45D(d)(2)(C) of the Internal Revenue Code, relating to qualified*
31 *active low-income community business: “A ‘qualified active*
32 *low-income community business’ shall include an operating*
33 *business that, at the time the initial investment is made, has 250*
34 *or less employees and is located in a low-income community. The*
35 *operating business shall meet all other conditions of a qualified*
36 *active low-income business, except as modified by this paragraph*
37 *and paragraph (6).”*

38 (6) *Section 45D(e)(1) of the Internal Revenue Code is modified*
39 *to add the following: “When the United States Census Bureau*
40 *discontinues using the decennial census to report median family*

1 *income on a census tract basis, census block group data shall be*
2 *used based on the American Community Survey.”*

3 *(7) The following shall apply in lieu of the provisions of Section*
4 *45(D)(f)(1) 45D(f)(1) of the Internal Revenue Code, relating to*
5 *national limitation on amount of investments designated: “The*
6 *aggregate amount of credit that may be allocated in any calendar*
7 *year pursuant to this section and Section 23622.9 shall be an*
8 *amount equal to any unused portion of the one hundred million*
9 *dollars (\$100,000,000) in exclusions, authorized pursuant to*
10 *Section 6010.8, as determined by the California Alternative Energy*
11 *and Advanced Transportation Financing Authority and reported*
12 *to the committee, not to exceed forty million dollars (\$40,000,000).*
13 *The committee shall limit the allocation of credits permitted under*
14 *this section and Section 23622.9 to a cumulative total of no more*
15 *than two hundred million dollars (\$200,000,000). Any unused*
16 *credits shall be returned to the committee at the end of the third*
17 *year following allocation and the value of the unused credit shall*
18 *be available for allocation in the following calendar years.*
19 *Reallocation credits shall not count against the forty million dollars*
20 *(\$40,000,000) annual limit or the two hundred million dollars*
21 *(\$200,000,000) cumulative limit.”*

22 *(8) Section 45D(g)(3) of the Internal Revenue Code, relating*
23 *to recapture event, is modified by adding the following:*
24 *“Notwithstanding the provisions of this paragraph, a recapture*
25 *event shall not have occurred and an investment shall be*
26 *considered held by a community development entity upon its sale*
27 *or repayment, provided the qualified community development entity*
28 *reinvests an amount equal to the capital returned to or recovered*
29 *by the qualified community development entity from the original*
30 *investment, exclusive of any profits realized, in another qualified*
31 *low-income community investment within 12 months of the receipt*
32 *of that capital. A qualified community development entity shall*
33 *not be required to reinvest capital returned from a qualified*
34 *low-income community investment after the sixth anniversary of*
35 *the issuance of the qualified equity investment, the proceeds of*
36 *which were used to make the qualified low-income community*
37 *investment. The qualified low-income community investment shall*
38 *be considered held by the qualified community development entity*
39 *through the seventh anniversary of the issuance of the qualified*
40 *equity investment.”*

1 (9) Section 45D(i) of the Internal Revenue Code, relating to
2 regulations, shall not apply.

3 (d) (1) The committee shall adopt guidelines necessary or
4 appropriate to carry out the purposes of this section. The guidelines
5 shall not disqualify a low-income community investment for the
6 single reason that public or private incentives, loans, equity
7 investments, technical assistance, or other forms of support have
8 been or continue to be provided. The adoption of the guidelines
9 shall not be subject to the rulemaking provisions of the
10 Administrative Procedure Act of Chapter 3.5 (commencing with
11 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
12 Code.

13 (2) The committee shall establish and impose reasonable fees
14 upon entities that apply for the allocation pursuant to subdivision
15 (d) and use the revenue to defray the cost of administering the
16 program. The committee shall establish the fees in a manner that
17 ensures that (A) the total amount collected equals the amount
18 reasonably necessary to defray the committee's costs in performing
19 its administrative duties under this section, and (B) the amount
20 paid by each entity reasonably corresponds with the value of the
21 services provided to the entity.

22 (3) In developing guidelines the committee shall adopt an
23 allocation process that does all of the following:

24 (A) Creates an equitable distribution process that ensures that
25 low-income communities across the state have an opportunity to
26 benefit from the program.

27 (B) Sets minimum organizational capacity standards that
28 applicants must meet in order to receive an allocation of credits.

29 (C) Requires annual reporting by each community development
30 entity that receives an allocation. The report shall include, but is
31 not limited to, the impact the credit had on the low-income
32 community, the amount of moneys used, and the types of activities
33 funded through the equity investment. The reporting period shall
34 be for a period of eight years following the allocation of credits.

35 (D) Provides for the annual return of unused credits following
36 the third year after being awarded so that they may be reallocated
37 to other community development entities.

38 (e) In the case where the credit allowed by this section exceeds
39 the "net tax," the excess may be carried over to reduce the "net

1 tax” in the following year, and the seven succeeding years if
2 necessary, until the credit is exhausted.

3 (f) The committee shall annually report on its Internet Web site
4 the information provided by low-income community development
5 entities and on the geographic distribution of the credits.

6 (g) This section shall remain in effect only until December 1,
7 2028, and as of that date is repealed.

8 SEC. 3. Section 23622.9 is added to the Revenue and Taxation
9 Code, to read:

10 23622.9. (a) There is hereby created the California New
11 Markets Tax Credit Program as provided in this section and
12 Section 17053.9. The purpose of this program is to stimulate
13 economic development, and hasten California’s economic recovery,
14 by authorizing tax credits for investment in California, including,
15 but not limited to, retail businesses, real property, financial
16 institutions, and schools. The California Tax Credit Allocation
17 Committee shall have responsibility for the administration of this
18 program as provided in this section and Section 17053.9.

19 (b) (1) For taxable years beginning on or after January 1, 2015,
20 and before January 1, 2021, there shall be allowed as a credit
21 against the “tax,” as defined in Section 23036, an amount
22 determined in accordance with Section 45D of the Internal Revenue
23 Code, as modified as set forth in this section.

24 (2) This credit shall be allowed only if the taxpayer holds the
25 qualified equity investment on the credit allowance date and each
26 of the six following anniversary dates of that date.

27 (c) Section 45D of the Internal Revenue Code is modified as
28 follows:

29 (1) (A) The references to “the Secretary” in Section 45D of the
30 Internal Revenue Code are modified to read “the committee.”

31 (B) For purposes of this section, “committee” means the
32 California Tax Credit Allocation Committee as described in
33 subdivision (a) of Section 50199.7 of the Health and Safety Code,
34 or any successor thereto.

35 (2) Section 45D(a)(2) of the Internal Revenue Code is modified
36 by substituting for “(A) 5 percent with respect to the first 3 credit
37 allowance dates, and (B) 6 percent with respect to the remainder
38 of the credit allowance dates.” with the following:

39 (A) Zero percent with respect to the first two credit allowance
40 dates.

1 (B) Seven percent with respect to the third credit allowance
2 date.

3 (C) Eight percent with respect to the remainder of the credit
4 allowance dates.

5 (3) The provisions of Section 45D(b) of the Internal Revenue
6 Code is modified as follows:

7 (A) Section 45D(b)(1) of the Internal Revenue Code is modified
8 by substituting “3 years” for “5 years” and “3-year period” for
9 “5-year period.”

10 (B) Section 45D(b)(3) of the Internal Revenue Code is modified
11 by substituting “qualified low-income community investments in
12 California” for “qualified low-income community investments.”

13 (4) Section 45D(d)(1)(A) of the Internal Revenue Code, relating
14 to qualified low-income community investments, is modified to
15 include any capital or equity investment in, or loan to, any real
16 estate project located in a low-income community or any operating
17 business that, at the time the initial investment is made, has 250
18 or less employees and is located in a low-income community. The
19 real estate project or operating business shall meet all other
20 conditions of a qualified active low-income community business,
21 except as modified by paragraphs (5) and (6).

22 (5) The term “qualified active low-income community business,”
23 as defined in Section 45D(d)(2) of the Internal Revenue Code is
24 modified as follows:

25 (A) Section 45D(d)(2)(A)(i) of the Internal Revenue Code is
26 modified by substituting “any low-income community in
27 California” for “any low-income community.”

28 (B) Section 45D(d)(2)(A)(ii) of the Internal Revenue Code is
29 modified by substituting “any low-income community in
30 California” for “qualified low-income community investments.”

31 (C) Section 45D(d)(2)(A)(iii) of the Internal Revenue Code shall
32 not apply.

33 (D) The following shall apply in lieu of the provisions of Section
34 45D(d)(2)(C) of the Internal Revenue Code, relating to qualified
35 active low-income community business: “A ‘qualified active
36 low-income community business’ shall include an operating
37 business that, at the time the initial investment is made, has 250
38 or less employees and is located in a low-income community. The
39 operating business shall meet all other conditions of a qualified

1 active low-income business, except as modified by this paragraph
2 and paragraph (6).”

3 (6) Section 45D(e)(1) of the Internal Revenue Code is modified
4 to add the following: “When the United States Census Bureau
5 discontinues using the decennial census to report median family
6 income on a census tract basis, census block group data shall be
7 used based on the American Community Survey.”

8 (7) The following shall apply in lieu of the provisions of Section
9 45(D)(f)(1) of the Internal Revenue Code, relating to national
10 limitation on amount of investments designated: “The aggregate
11 amount of credit that may be allocated in any calendar year
12 pursuant to this section and Section 17053.9 shall be an amount
13 equal to any unused portion of the one hundred million dollars
14 (\$100,000,000) in exclusions, authorized pursuant to Section
15 6010.8, as determined by the California Alternative Energy and
16 Advanced Transportation Financing Authority and reported to the
17 committee, not to exceed forty million dollars (\$40,000,000). The
18 committee shall limit the allocation of credits permitted under this
19 section and Section 23622.9 to a cumulative total of no more than
20 two hundred million dollars (\$200,000,000). Any unused credits
21 shall be returned to the committee at the end of the third year
22 following allocation and the value of the unused credit shall be
23 available for allocation in the following calendar years.
24 Reallocation credits shall not count against the forty million dollars
25 (\$40,000,000) annual limit or the two hundred million dollars
26 (\$200,000,000) cumulative limit.”

27 (8) Section 45D(g)(3) of the Internal Revenue Code, relating
28 to recapture event, is modified by adding the following:
29 “Notwithstanding the provisions of this paragraph, a recapture
30 event shall not have occurred and an investment shall be
31 considered held by a community development entity upon its sale
32 or repayment, provided the qualified community development entity
33 reinvests an amount equal to the capital returned to or recovered
34 by the qualified community development entity from the original
35 investment, exclusive of any profits realized, in another qualified
36 low-income community investment within 12 months of the receipt
37 of that capital. A qualified community development entity shall
38 not be required to reinvest capital returned from a qualified
39 low-income community investment after the sixth anniversary of
40 the issuance of the qualified equity investment, the proceeds of

1 *which were used to make the qualified low-income community*
2 *investment. The qualified low-income community investment shall*
3 *be considered held by the qualified community development entity*
4 *through the seventh anniversary of the issuance of the qualified*
5 *equity investment.”*

6 *(9) Section 45D(i) of the Internal Revenue Code, relating to*
7 *regulations, shall not apply.*

8 *(d) (1) The committee shall adopt guidelines necessary or*
9 *appropriate to carry out the purposes of this section. The guidelines*
10 *shall not disqualify a low-income community investment for the*
11 *single reason that public or private incentives, loans, equity*
12 *investments, technical assistance, or other forms of support have*
13 *been or continue to be provided. The adoption of the guidelines*
14 *shall not be subject to the rulemaking provisions of the*
15 *Administrative Procedure Act of Chapter 3.5 (commencing with*
16 *Section 11340) of Part 1 of Division 3 of Title 2 of the Government*
17 *Code.*

18 *(2) The committee shall establish and impose reasonable fees*
19 *upon entities that apply for the allocation pursuant to subdivision*
20 *(d) and use the revenue to defray the cost of administering the*
21 *program. The committee shall establish the fees in a manner that*
22 *ensures that (A) the total amount collected equals the amount*
23 *reasonably necessary to defray the committee’s costs in performing*
24 *its administrative duties under this section, and (B) the amount*
25 *paid by each entity reasonably corresponds with the value of the*
26 *services provided to the entity.*

27 *(3) In developing guidelines the committee shall adopt an*
28 *allocation process that does all of the following:*

29 *(A) Creates an equitable distribution process that ensures that*
30 *low-income communities across the state have an opportunity to*
31 *benefit from the program.*

32 *(B) Sets minimum organizational capacity standards that*
33 *applicants must meet in order to receive an allocation of credits.*

34 *(C) Requires annual reporting by each community development*
35 *entity that receives an allocation. The report shall include, but is*
36 *not limited to, the impact the credit had on the low-income*
37 *community, the amount of moneys used, and the types of activities*
38 *funded through the equity investment. The reporting period shall*
39 *be for a period of eight years following the allocation of credits.*

1 (D) Provides for the annual return of unused credits following
2 the third year after being awarded so that they may be reallocated
3 to other community development entities.

4 (e) In the case where the credit allowed by this section exceeds
5 the “tax,” the excess may be carried over to reduce the “tax” in
6 the following year, and the seven succeeding years if necessary,
7 until the credit is exhausted.

8 (f) The committee shall annually report on its Internet Web site
9 the information provided by low-income community development
10 entities and on the geographic distribution of the credits.

11 (g) This section shall remain in effect only until December 1,
12 2028, and as of that date is repealed.

13 SEC. 4. This act provides for a tax levy within the meaning of
14 Article IV of the Constitution and shall go into immediate effect.

15
16
17 **All matter omitted in this version of the bill**
18 **appears in the bill as amended in the**
19 **Senate August 22, 2013. (JR11)**
20